IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4924 OF 2004.

Shri Birdichand Bhurchand Banthiya
(since deceased) through L.Rs. .... Petitioners.

versu.

State of Maharashtra & another. .... Respondents.

Ms.Anita Patil hlolding for Shri S.J.Ghogare & Shri M.R.Patil for the Petitioners.

Shri Patil, A.G.P. for the Respondents Nos.1 & 2.

CORAM : ABHAY S.OKA, J.

DATED : 8th December, 2004.

P.C.:

1. I have perused the order dated 16th June 2004 passed by this Court by which notice for final disposal was ordered to be issued. Accordingly I have finally heard this Writ Petition today. Heard the learned Counsel appearing for the parties.

2. The Petitioners are Claimants in a Land Acquisition Reference which has been decided in their favour. An Application was made by the Petitioners on 20th January 2003 before the trial Court for withdrawal of a sum of Rs.11,75,695/- which was deposited by the Special Land Acquisition Officer on the basis of the Award. By order dated 24th March 2004, the learned trial Judge permitted the Petitioners to withdraw the amount on furnishing of bank guarantee of half the amount.

3. An Application was made by the Petitioner No.4 for himself and as Constituted Attorney of the Petitioners Nos.1 to 3 for withdrawal of the amount. A prayer was made in the said application that the sum of Rs.11,75,695/- be paid over to the Petitioner No.4. It was stated in the said Application that of the Petitioner No.4 was ready and willing to furnish an indemnity bond. By order dated 23rd April 2004, the learned trial Judge directed that the amount cannot be paid to the holder of the Power of Attorney and it was for the concerned parties to come to the Court for receiving the payment. The challenge in this petition under Article 227 of the Constitution of India is to the said order.

4. Shri Ghogare the learned Counsel appearing for the Petitioners submitted that the Petitioners Nos.1(a) to 1(g), and the Petitioners Nos.2(a) to 2(h) have executed a Power of Attorney dated 26th October 1998 in favour of the Petitioners Nos.3 and 4. He submitted that the said Power of Attorney is still valid and subsisting and it empowers the Petitioners Nos.3 and 4 to withdraw the amount which is deposited in the trial Court. He invited my attention to clause No.7 of the Power of Attorney. He further pointed out that the Petitioner No.3 has also executed an irrevocable Power of Attorney in favour of the Petitioner No.4 on 22nd November 2002 and the said Power of Attorney is valid and subsisting. He,

therefore, submitted that if the Petitioner No.4 has been empowered by the other Petitioners to withdraw the amount, the learned trial Judge ought to have permitted the Petitioner No.4 to withdraw the amount on behalf of the other Petitioners. He submitted that the very object of giving Power of Attorney will be frustrated if the all the Petitioners are required to attend the trial Court for the purpose of receiving the amount.

5. Shri Patil, the learned A.G.P. appearing for the Respondents submitted that as the Appeal preferred by the State Government is pending the amount will have to be properly secured.

6. I have considered the rival submissions. If the Power of Attorney dated 26th October 1998 and 22nd November 2002 referred to by the Petitioners are valid and subsisting, the Petitioner No.4 is entitled to withdraw the amount. However, the Petitioner No.4 will have to produce the original Power of Attorneys dated 26th October 1998 and 22nd November 2002 before the trial Court for verification by the concerned Officer of the trial Court. The Petitioner No.4 will have also to file an affidavit in the trial Court stating therein that both the Power of Attorneys are valid and subsisting. By the earlier order the trial Court permitted withdrawal of the said amount subject to furnishing Bank Guarantee for half of the amount. The said condition also will have to be

complied with by the Petitioner No.4 before the amount is allowed to be withdrawn by him.

7. Hence I pass the following order:

(i) The impugned order dated 23rd April 2004 is quashed and set aside.

(ii) The Petitioner No.4 is permitted to withdraw the amount of Rs.11,75,695/- subject to compliance with the following conditions :

(a) The Petitioner No.4 will produce in the trial Court the original Power of Attorneys dated 26th October 1998 and 22nd November 2002.

(b) The Petitioner No.4 will file an affidavit in the trial Court stating that both the Power of Attorneys are still valid and subsisting.

(c) The Petitioner No.4 will furnish Bank Guarantee in terms of order dated 24th March 2004.

(d) The Petitioner No.4 will submit an Indemnity Bond as stated by him in Application dated 23rd April 2004.

(iii) It is made clear that the trial Court will permit the Petitioner No.4 to withdraw the amount only after compliance with the aforesaid conditions and only after the original Power of Attorneys are duly verified by the Superintendent or any other officer of the trial Court who may be authorised by the learned trial Judge in that behalf.

(iv) If the Petitioner No.4 has already furnished the Bank Guarantee, the trial Court will treat the same as in due compliance with the aforesaid condition No.(c).

(v) Rule is made partly absolute with no order as to costs.

(vi) Parties and the trial Court will act on the authenticated copy of this order.

Judge.